IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH PAUSHA 1928

WP(C).No. 18488 of 2006(A)

PETITIONER:

N.SAJI PRAKASH, S/O.R.NARAYANA PILLAI,
AGED 45 YEARS, TYPE.II-A14,
N.P.O.L.QUARTERS, NEAR WIRELESS STATION,
PALLURUTHY, KOCHI-6,
(ENGINE FITTER, GRADE-II, N.S.R.Y.,
NAVAL BASE, KOCHI).

BY ADV. SRI.C.K.SAJEEV

RESPONDENTS:

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1. SPECIAL DEPUTY TAHSILDAR (R.R),
KERALA STATE FINANCIAL ENTERPRISES LTD.,
ERNAKULAM-18.

2. MANAGER,
KERALA STATE FINANCIAL ENTERPRISES LTD.,
KOTTAYAM BRANCH, KOTTAYAM.

3. THOMAS ABRAHAM, MYLAKKADU VEEDU,
MANARKKAD.P.O, KOTTAYAM-19.

4. SUBRAN,
ALATHU VEEDU,
ANANDAPURAM.P.O, THRISSUR.

R1&2 BY ADV. SRI.SHIRAZ ABDULLA, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.18488 of 2006

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Dated this the 3rd day of January, 2007.

JUDGMENT

The petitioner, a guarantor for the loan availed by third respondent is challenging recovery proceedings. Standing Counsel for KSFE submitted that loan is based on personal guarantee of the petitioner and 4th respondent. In the circumstances, recovery is rightly initiated against the petitioner by attachment of his salary. However, on equitable considerations, I feel if the principal debtor has assets, recovery should be proceeded against his assets. Since counsel for KSFE submitted that KSFE has no information about the properties of third respondent, it is for the petitioner to get the details of properties of the third respondent certified by Village Officer of that area and furnish it before first respondent and if such certificate is furnished, the first respondent will forward the same to the concerned Tahsildar for proceeding for recovery against third respondent's property. If petitioner furnishes details, there will be direction to such recovery authority to proceed against third respondent's movables and immovables without any delay. Recovery by attachment of petitioner's salary will continue. However, attachment of salary should be subject to

ceiling provided under Section 60(1)(i) of CPC read with Section 80 of the Revenue Recovery Act unless triparte agreement is there for recovery of specified amount.

C.N.RAMACHANDRAN NAIR
Judge

pms